



State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES

6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095
(603) 271-2900 FAX (603) 271-2456



Bob and Pat Brennan
572 Bearcamp Highway
Tamworth, NH 03890

ADMINISTRATIVE ORDER
No. WMD 03-01

January 10, 2003

Re: 572 Bearcamp Highway
Tamworth, NH 03890

A. INTRODUCTION

This Administrative Order is issued by the Department of Environmental Services, Waste Management Division to Bob Brennan and Pat Brennan pursuant to RSA 149-M:15, I. This Administrative Order is effective upon issuance.

B. PARTIES

1. The Department of Environmental Services, Waste Management Division ("DES"), is a duly constituted administrative agency of the State of New Hampshire, having its principal office at 6 Hazen Drive, Concord, NH 03301.
2. Bob Brennan and Pat Brennan are individuals having a mailing address of 572 Bearcamp Highway, Tamworth, NH 03890.

C. STATEMENTS OF FACTS AND LAW

1. Pursuant to RSA 149-M, DES regulates the management and disposal of solid waste. Pursuant to RSA 149-M:7, the Commissioner of DES has adopted Env-Wm 100 – 300, 2100 *et seq.* ("Solid Waste Rules") to implement this program.
2. Donald and Ann McGarity are the record owners of land at 572 Bearcamp Highway, Tamworth, NH, more particularly described in a deed recorded in the Carroll County Registry of Deeds at Book 1494, Page 997, and identified on Tamworth Tax Map 205, as lot 11 (the "Site").
3. Bob and Pat Brennan reside at the Site.
4. On September 19, 2002, DES personnel conducted an inspection of the Site. The purpose of the inspection was to determine compliance relative to RSA 149-M and the Solid Waste Rules.
5. RSA 149-M:4, XXII defines "solid waste" as "any matter consisting of putrescible material, refuse, residue from an air pollution control facility, and other discarded or abandoned material."
6. RSA 149-M:4, XXI defines "refuse" in part, as "any waste product ... which is composed wholly or partly of such materials as ... brick, plaster or other waste resulting from the demolition, alteration, or construction of buildings or structures; or accumulated waste material, cans, containers, tires, junk, or other such substances which may become a nuisance."

7. During the September 19, 2002 inspection, DES personnel observed approximately 10 cubic yards of household garbage. The household garbage was brought to the attention of Pat Brennan, who agreed that it belonged to her household.

8. The household trash observed by DES personnel at the Site is solid waste as defined by RSA 149-M:4, XXII.

9. RSA 149-M:4, IX defines a "[solid waste] facility" as "a location, system, or physical structure for the collection, separation, storage, transfer, processing, treatment or disposal of solid waste."

10. The Site constitutes a "solid waste facility" as defined by RSA 149-M:4, IX.

11. RSA 149-M:9, I states that "No person shall construct, operate or initiate closure of a public or private facility without first obtaining a permit from [DES]."

12. A review of DES files shows that neither Bob Brennan nor Pat Brennan have applied for or holds a permit to operate a solid waste facility at any New Hampshire location.

13. As a result of the September 19, 2002 inspection, DES issued a Report of Initial Complaint Investigation ("RICI") dated September 19, 2002, to Pat Brennan advising her to cease operating an unpermitted solid waste facility and remove all household garbage to a permitted solid waste facility by October 3, 2002.

14. On October 21, 2002, DES personnel conducted a follow-up inspection of the Site. The Site remained unchanged since the September 19, 2002 inspection.

15. On October 21, 2002, DES personnel met with Donald McGarity, Site owner, relative to the issues at the Site. DES personnel informed Mr. McGarity that the tenants at the Site, Mr. and Mrs. Brennan, had not complied with the RICI issued to them on September 19, 2002.

16. On October 21, 2002, DES personnel received an e-mail from Ms. Brennan stating that the household garbage would be removed by the weekend. Ms. Brennan also stated in the e-mail that if DES personnel stopped by on October 28, 2002, the household trash would no longer be at the Site.

17. On December 3, 2002, DES personnel conducted a follow-up inspection of the Site. Approximately 50% of the household trash had been removed.

18. On January 8, 2003, DES personnel conducted a follow-up inspection of the Site. The Site remained unchanged since the December 3 2002 inspection.

D. DETERMINATION OF VIOLATIONS

1. Bob Brennan and Pat Brennan have violated RSA 149-M:9, by operating an unpermitted solid waste facility.

E. ORDER

Based on the above findings, DES hereby orders Bob Brennan and Pat Brennan as follows:

Immediately cease operating an unpermitted solid waste facility.

2. **By February 3, 2003**, remove all solid waste, specifically household garbage, at the Site to a permitted solid waste facility.
3. **By February 10, 2003**, forward copies of disposal receipts to DES.
4. Send correspondence, data, reports, and other submissions made in connection with this Administrative Order, **other than appeals**, to DES as follows:

Michael Galuszka, Waste Management Specialist
Department of Environmental Services
80 Glen Road
Gorham, NH 03581
Fax: (603) 466-5148
e-mail: mgaluszka@des.state.nh.us

F. APPEAL

Any person aggrieved by this Order may appeal the Order to the Waste Management Council by filing an appeal that meets the requirements specified in Env-WMC 200 within 30 days of the date of this Order. Copies of the rule are available from the DES Public Information Center at (603) 271-2975 or at <http://www.des.state.nh.us/desadmin.htm>. Appealing the Order does not automatically relieve Bob Brennan or Pat Brennan of the obligation to comply with the Order.

G. OTHER PROVISIONS

Please note that RSA 149-M provides for administrative fines, civil penalties, and criminal penalties for the violations noted in this Order, as well as for failing to comply with the Order itself. Bob Brennan and Pat Brennan remain obligated to comply with all applicable requirements, in particular RSA 149-M and the Solid Waste Rules. DES will continue to monitor Bob Brennan and Pat Brennan's compliance with applicable requirements and will take appropriate action if additional violations are discovered.

COPY

Philip J. O'Brien, Ph.D., P.G., Director
Waste Management Division

COPY

George Dana Bisbee, Acting Commissioner
Department of Environmental Services

Certified Mail/RRR: 7000 1670 0000 0584 3915

DB/FILE
Gretchen Rule, DES Legal Unit
Public Information Coordinator, DES
Jennifer Patterson, Sr. Assistant Attorney General
Town Clerk, Tamworth, NH